

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARLOS ALVAREZ CHICAS, ALONSO VILLATORO,
MISAEAL ALEXANDER MARTINEZ CASTRO, ANGEL
MARTINEZ, EDWIN ULLOA MOREIRA and MATEO
UMAÑA individually and on behalf of all others similarly
situated,

**Case No. 21-cv-09014
(PAE)(SDA)**

Plaintiffs,

- against -

KELCO CONSTRUCTION, INC., KELCO
LANDSCAPING, INC., E.L.M. GENERAL
CONSTRUCTION CORP. D/B/A KELLY'S CREW, JOHN
KELLY and JOSEPH PROVENZANO,

Defendants.

**NOTICE OF PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION AND
COURT-AUTHORIZED NOTICE PURSUANT TO SECTION 216(b) OF THE FLSA**

PLEASE TAKE NOTICE that Plaintiffs Carlos Alvarez Chicas, Alonso Villatoro, Misael Alexander Martinez Castro, Angel Martinez, Edwin Ulloa Moreira and Mateo Umana will this Court, before the Honorable Stewart D. Aaron, United States Magistrate Judge, at the United States District Court, Southern District of New York, for an Order:

(1) Granting Leave to give notice of this action as a representative collective action pursuant to the FLSA , 29 U.S.C. § 216, to the following collective classes:

- a. All hourly employees of Kelco Construction, Inc. ("Kelco") who, at any time during the three year period prior to the filing of the complaint and up to the present time, received wages from Kelco and E.L.M. General Construction Corp. ("ELM") for the same workweek;

- b. All hourly Kelco employees who drove company vehicles at any time during the three year period prior to the filing of the complaint and up to the present time;
 - c. All hourly ELM employees who worked at any time during the three year period prior to the filing of the complaint and up to the present time.
- (2) Directing Defendants to produce three excel spreadsheets (one for each proposed collective class) containing the name, last known mailing address, email address, cell phone number, job title, dates of employment with Kelco, and dates of employment with ELM of each putative collective member within ten (10) business days of this Court's order;
- (3) Approving the proposed FLSA notice of this action and the consent form annexed to this Notice of Motion as Exhibit 1;
- (4) Directing Plaintiffs' counsel to provide notice by first class mail and email to each putative collective member in English and Spanish within 10 days of production of the aforementioned excel spreadsheets;
- (5) Granting Plaintiffs' counsel leave to send a text message to each putative collective action member in English and Spanish, within 10 days of the production of the excel spreadsheet as follows:

This message is sent from the Moser Law Firm, P.C., and has been authorized by the United States District Court for the Southern District of New York in the case of Alvarez v. Kelco Construction, Inc. et al., 21-cv-9014 (PAE)(SDA). If you work or have worked for Kelco Construction, Inc. or E.L.M. General Construction Corp. d/b/a Kelly's Crew at any time since November 2, 2018, you may be entitled to join a lawsuit seeking unpaid overtime compensation. For additional information about the case, including how to join, please (i) respond to this text message, (ii) email legalsupport2@moserlawfirm.com, or (iii) visit www.moserlawfirm.com/kelconotice.com.

(6) Setting an opt-in period of Sixty (60) days following the date on which the Notice is sent for opt-in members to mail or email completed consent forms to Plaintiffs' Counsel (the "Opt-In Period");

(7) Granting Plaintiffs' counsel leave to send a text reminder 30 days before the close of the Opt-In Period as follows:

This reminder is sent from the Moser Law Firm, P.C. and has been authorized by the Court in the case of *Alvarez v. Kelco Construction, Inc. et al.*, 21-cv-9014 (PAE)(SDA). You should have already received notice of your right to join an overtime lawsuit against Kelco Construction, Inc. and E.L.M. General Construction Corp. d/b/a Kelly's Crew. You are not required to join this lawsuit. However, if you want to participate the deadline to join is _____. If you need further information please (i) text 516-671-1150, (ii) email legalsupport2@moserlawfirm.com, or (iii) visit www.moserlawfirm.com/kelconotice.com."

(8) An order directing the defendants to post the Notice in a prominent location at each jobsite where employees work for the entire duration of the opt-in period, and to file an affidavit of compliance with the posting requirements within ten (10) days of the close of the opt-in period.

PLEASE TAKE FURTHER NOTICE that, Pursuant to the proposed briefing schedule, which has been approved by the Court, Defendants' Response to this Motion is due by January 27, 2023 and Plaintiffs' Reply is due by February 6, 2023.

Dated: December 23, 2022
Huntington, New York

Respectfully Submitted,

MOSER LAW FIRM, P.C.



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TO: All Counsel of Record (Via ECF)